O. Torts/45

1945

File No.

Legal Department

A **BRANCH**

Subject:—

Opinions—

Regarding Torts

O. Torts/45

File No.

182-A

Gen. 194 e.

CXXXXXTXN
EXXXXXXTXXX
C O N T E N T .

Legal Department File No. C Torts. /-945.

666

Sr. No.	Compilation Nr.	Subject.	Pages.
		Opinions regarding Torts.	
1)	R. T. No. 10958 dt. 22-12-44. C.No. 1288 13-2/45.	Notice of a suit given by one Mr. T.I. Mehta and Fl. contractor, to the Fl. Inspector, Bom. Province, claiming Rs. 2000/- by way of damages for alleged malicious prosecution launched against him by the Fl. Inspector.	1-4.
2)	C.No. 4407 dt. 11-6-45.	Whether the suit, if filed would be defensible.	5-6.

Phk 1/8

Nlcs 1/8

Office of the P.L.A.

The circumstances under which the prosecution came to be instituted are more important in the proposed civil suit than the facts as they were placed before the criminal courts. The oral and documetary evidence which was produced before the cirminal courts is not before the P.L.A. Nevertheless the suit is defensible.

2. Section 36 of the Indian Electricity Act provides for the appointment of Electric Inspectors. Rule 39(a) framed under rule 48 of the Ind. Electricity Rules, 1937 provides that no electrical installation work shall be commenced by licensed electrical contractor without notifying in writing the Electric Inspector or his assistant. Sec. 30 of the Electricity Act deals with control of transmission and use of energy and provides, so far as is material for this case, that no person other than a licensee duly authorised shall transmit or use energy at a rate exceeding 250 watts in any place in which 100 or more persons are likely to be assembled without giving the D.M. not less than 7 clear days' notice in writing of his intention. It may be seen that Rule 39(a) and sec. 30 deal with different matters and that the notices also are to be addressed to different authorities.

3. On 9-4-1943, Mr. Mehta gave notices to both the District Magistrate and the Assistant Electric Inspector. The Assistant Electric Inspector, presumably in consequence of the notice given to him, ordered the sub-Inspector Mr. Sindhe to inspect the installation, which the latter did on 14-4-1943. The District Magistrate replied to Mr. Mehta, on16-4-1943 as follows:- "Intimation given by you under section 30 of the Electricity Act for supply of electric energey at Manekbai Dharmashala at Kapadwanj from 12-4-1943 to 27-4-1943 is time barred and so your aprlication cannot be considered. On 18-5-1943 the Mamlatdar reported to the District Magistrate that Mr.

Mehta and Mr Shah (accused Nos. 1 and 2 in the criminal proceedings) had respectively transmitted and used electricity energy from 12-4-1943 to 21-4-1943. The District Magistrate threw on wrote to the Secretary, Home Department asking for the sanction of Government under section 50 of the Electricity Act to prosecute both Messrs. Mehta and Shah. The Home Department found that under section 50, a prosecution may be instituted at the instance of either Government, the Electric Inspector or a person aggrieved, and so before granting the sanction itself forwarded the papers to the Electrical Engineer (Mr. Higham) for remarks. Mr. Higham in turn forwarded them to the Electric Inspector, Mr. Nadkarni. Mr. Nadkarni stated only generally that the prosecution could be instituted by either the District Magistrate as an aggrieved party or by the Electric Inspector, and that in the latter case "the necessary instructions to institute the prosecution would be issued to the Assistant Electric Inspector on receipt of Government orders in the matter". Mr. Higham then returned the papers to Government in the Public Works Department with the remark: "the prosecution can be instituted by the Electric Inspector. The Assustant Electric Inspector will on receipt of Government, Public Works Department, on 29-7-1943 informed the District Magistrate accordingly. On 9-8-1943, Mr. Nadkarni passed a formal order, sanctioning the prosecution of Mr. Mehta under section 50 of the Electricity Act and authorising the Assistant Electric Inspector to launch the prosecution on his behalf.

instructions be asked to assist the Public Prosecutor." The Deputy Secretary to Govt

4. In an action for malicious prosecution, the plaintiff must prove the following points:-

(a) that the plaintiff was prosecuted by the defendant;

(b) that the prosecution ended in the plaintiff's favour;

(c) that the defendant acted without reasonable and probable cause;

(d) that the defendant was actuated by malice.

Point (a)- It does not appear that the decision to prosecute was at first taken by Mr. Nadkarni; but as he had the power to institute and did in fact institute the proceedings by his order dated 9-8-1943, a plea that he was not the real prosecutor will not be sustainable.

Point (b)- is clear.

Point (c)- The Sessions Judge acquitted Mr. Mehta on the ground that there was evidence not of his having transmitted energy, but only of having done the installation. As regards the notice given by Mr. Mehta on 9-4-1943, the learned judge observes as follows: "In Ex. 3A, accused No. 1 stated that he had begun the work of temporary installation of 9kw Load. In his statement that he had already begun work that he referred to was the work of wiring etc. and it has no reference to the actual transmission of electrical enegry". It is possible that the facts were not fully placed before the Sessions Judge. He does not refer to rule 39(a) and, besides, Ex. 3A was the notice given to the Assistant Electric Inspector. For this particular prosecution it is clear that the relevant notice was the one given to the District Magistrate, viz. Ex. 4A . Probably the contents of the notices were similar, but this is what Mr. Mehta himself says about them in the present notice of suit; " I was employed by the organisers of the function only to do the wiring work and I was not legally bound to give the notice. However I gave notice under section 30 to the District Magistrate, Kaira and the Assistant Electric Inspector, Ahmedabad on 9.4-43 informing them that the temporary illumination is to be done from 14-4-43 to 27-4-43". The reference to illumination and not mere installation is important. In any case the question of reasonable and probable cause will have to be considered afresh in the civil suit and unhampered by the reasoning of the Sessions Judge. Even though the exact contents of the two notices of 9-4-43 cannot be reproduced here as the noticeare not before the XR.L.A.) it is clear that

the only notice which the District Magistrate receives is the one under section 30 and that in the present case that notice was sent by a licensed electrical contractor and referred not merely to installation but to the period of illumination. Under those circumstances the District Magistrate or any other authority had reasonable cause to believe that Mr. Mehta was responsible for the illumination and the transmission of energy. Plaintiff is therefore not likely to succeed in establishing point (c)-

Point (d) - Plaintiff has no case whatever on this point against Mr. Nadkarni; 'Malice' means an improper or indirect motive i.e. some motive other than a desire to vindicate public justice or private right. Though, as already pointed out, Mr. Nadkarni probably cannot be heard to say that he was not the real prosecutor but was merely acting under Government orders, it is nevertheless clear that he was a public officer acting on the reports of other officers. He had no enmity, spite or ill-will against Mr. Mehta. It may be that his appreciation of the facts as stated in the reports was, at the most, erroneous; but such error of judgment is a very different thing from malice. The suit if filed must therefore fail on this point also.

M/-P.N. M.

12-2-45.

Remembrancer of Legal Affairs.

M.P. to P.F.D. No. 1283, dated the 14th February 1945.

N.V.D.
10/7
4c.

Office of the P.L.A.

The suit, if filed, would be defensible. Mr. Mehta has admitted in his notice to Mr. Nadkarni that Mr. Raghavan filed the complaint at Mr. Nadkarni's instance. As Mr. Raghavan was in fact only a formal Prosecutor acting under the order of a superior, it will hardly be possible for Mr. Mehta to allege or to prove malice against him.

Sd/- I.N.P.

Remembrancer of Legal Affairs.

N.F. to F.D.L. No. 4407, dated
the 11th June 1945.

NV.D.
10/7
4c.